

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC. 14, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AAMP of Florida, Inc.

Serial No. 75/153,859

Jane Linowitz of Levisohn, Lerner, Berger & Langsam
for AAMP of Florida, Inc.

Robert Clark, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Hohein, Wendel and Holtzman, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

AAMP of Florida, Inc. has filed an application to
register the mark BEST for "electrical wiring harnesses for
use in automobiles comprising electrical wiring, electrical
jacks and support brackets."¹

¹ Serial No. 75/153,859, filed August 21, 1996, based on an
assertion of a bona fide intention to use the mark in commerce.
An amendment to allege use was filed June 6, 1997, setting forth
first use dates of February 1997.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 USC § 1052(d), on the ground of likelihood of confusion with the registered mark

for the following goods:

Class 7 : Airplane engines and component parts for engines, namely, engine shrouds, engine housing panels, vanes, blades, hubs, tail pipes, nozzles, compressors, deflectors, difusers, combustion liners, impellers, fans, reversers, turbines, turbine wheels, oil coolers, bearings, fuel control valves, pumps (hydraulic, pneumatic and water), motors (electric or fuel), engine starters, generators (electric), elevators;

Class 9 : Radios, radar, transponders, receivers, antennas, control knobs, housings for radios and radar units, tach generators, instrument panels, air speed indicators, revolutions per minute indicators, oil pressure gauges, temperature gauges, radio head sets, electrical wiring, coaxial cables, computer cables, electrical cables, fiber optic cables, electrical connectors, and electrical transformers;

Class 11 : Light bulbs, florescent starters, ventilator fans and screens, faucets, toilets, sinks, and sanitary waste holders;

Class 12 : Airplane structural parts, airplane framing parts, airplane housing parts, including, namely, pilons, rudders, struts, wings, landing gear, wheels, hubs, axials, control gears, control flaps, nose cones, doors, window panels, cabinets, seats, head rests, arm rests, indicator plates, face plates.²

² Registration No. 2,005,530, issued October 8, 1996, claiming a first use date of January 5, 1991 for all classes and a first use date in commerce of March 1, 1991 for all classes.

Both applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

Here, as in any determination of the likelihood of confusion, two key considerations in our analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods with which the marks are being used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Insofar as the marks in the present case are concerned, applicant argues that the presence of an "eagle" logo in addition to the word BEST results in a different appearance, connotation and commercial impression for the registered mark from applicant's unadorned word mark BEST. The Examining Attorney, on the other hand, contends that the dominant element of each mark is the word BEST and thus the overall commercial impressions of the marks are highly similar.

Although it is true that in determining likelihood of confusion, marks must be considered in their entirety, it is well established that there is nothing improper in giving more or less weight to a particular feature of the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ

749 (Fed. Cir. 1985). If the word portion of a mark rather than the design feature is more likely to be remembered and relied upon by purchasers in referring to the goods, it is the word portion which will be accorded more weight. See *Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A.*, 32 USPQ2d 1192 (TTAB 1994); *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987).

Here we find the word BEST to be the dominant feature of registrant's mark. This would be the means by which purchasers would refer to, or call for, registrant's goods. The absence of a design feature in applicant's mark similar to registrant's design, whether characterized as an eagle (applicant), a highly stylized bird (Examining Attorney), or a phoenix symbol, does not significantly alter the overall commercial impression engendered by applicant's mark. Furthermore, since applicant's mark is presented in a typed drawing, applicant is not limited to any specific format for its mark and could present its mark in a manner very similar to that of registrant. See *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983); *Jockey International Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1223 (TTAB 1992). Thus, we find the overall commercial impressions created by the two marks to be highly similar.

Applicant's basic argument is that, regardless of any similarity of the marks, the goods of the parties and the channels of trade in which they travel are separate and distinct. Applicant contends that registrant's goods are strictly structural and electrical parts for airplanes, whereas applicant's goods are automotive audio wiring parts. As such, applicant asserts, the goods would travel in separate channels of trade and be sold to different classes of customers. In support of its contentions, applicant has made of record the affidavit of its investigator who visited registrant's headquarters and who determined as a result of this visit that registrant was involved only in the repair and sale of airplane parts and did not deal in automotive parts. (Exhibit A.) Applicant also points to the fact that the goods listed in Classes 7 and 12 of the cited registration are specifically limited to airplane parts.

It is well established that likelihood of confusion must be determined on the basis of an analysis of the mark as applied to the goods recited in the application and the goods recited in the registration, rather than what any evidence shows the goods to be. See *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *Canadian Imperial Bank of Commerce v. Wells Fargo*

Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Here, as pointed out by the Examining Attorney, although registrant limited its structural parts in Classes 7 and 12 to airplane parts, registrant made no such limitation of its electrical wiring, electrical connectors, or other goods set forth in Class 9. Accordingly, we must make our determination of likelihood of confusion on the basis that the electrical wiring and the other electrical components listed in Class 9 of the cited registration are suitable for all purposes, including automotive use.

As a result, applicant's attempted distinctions of the goods of the parties on the basis of field of use, channels of trade and classes of customers are to no avail. The "electrical wiring" of the registration, being without limitation as to field of use, must be considered to encompass the automotive electrical wiring of applicant. For purposes of our analysis, the goods of the parties are, at least in part, identical.

Accordingly, we find that there is a likelihood of confusion if applicant uses the mark BEST in connection with its automotive electrical wiring harnesses, in view of registrant's mark BEST and design for electrical wiring and the other electrical components identified in the Class 9 goods of the registration.

Decision: The refusal to register under Section 2(d)
is affirmed.

G. D. Hohein

H. R. Wendel

T. E. Holtzman

Trademark Administrative Judges,
Trademark Trial and Appeal Board

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